

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON**

UNITED STATES OF AMERICA

v.

FREEDOM INDUSTRIES, INC.

CRIMINAL NO.: 2:14-CR-00275

DEFENDANT FREEDOM INDUSTRIES, INC.'S SENTENCING MEMORANDUM

AND NOW, Defendant, Freedom Industries, Inc., by and through its counsel, Robert R. Leight, Esquire, and Pietragallo Gordon Alfano Bosick & Raspanti, LLP, and files the within Sentencing Memorandum to assist the court in determining a fair and just sentence. As set forth below, it is respectfully requested, due to the unique circumstances of this case, that the court not impose a sentence of probation, fine, and/or restitution in connection with this matter. This request is based upon the underlying facts of the case, including the following:

- Freedom Industries has ceased operation and as of October 6, 2015, an Order confirming the plan of liquidation was filed and entered with the United States Bankruptcy Court Southern District of West Virginia.
- The United States and Freedom Industries, pursuant to a Plea Agreement, have agreed that due to the pending dissolution of Freedom Industries and the large number of victims in this case, that any payment of restitution by Freedom Industries would be best addressed in the Freedom Industries bankruptcy case.
- Pursuant to the Plea Agreement, Freedom Industries has cooperated with the government and has done so since immediately after the spill was uncovered.
- The bankruptcy order confirming the plan of liquidation approved the appointment of Robert Johns as Spill Plan Administrator.

- Mr. Johns, as Spill Plan Administrator, is currently liquidating assets to satisfy the existing debts in the bankruptcy case that is pending.
- Pursuant to the Presentence Report prepared by the United States Probation Office for the Southern District of West Virginia, the current total liabilities of Freedom Industries significantly outweighs the total assets.¹
- That any fines ordered by this court would impact upon the Freedom bankruptcy matter and would prevent the bankruptcy action from providing valuable assets to the victims in this case.
- Since Freedom Industries has ceased conducting business and is in the process of dissolution, a term of probation would not advance the interests of justice.

I. Statement of the Case

The court is extremely familiar with the background and history of Freedom Industries. Freedom Industries, a West Virginia corporation, was founded in 1992. In 2001, the principal shareholders of Freedom Industries formed Etowah River Terminal, LLC to purchase and operate an above-ground storage facility located at 1015 Barlow Drive, Charleston, WV, known as the Etowah Terminal. The owners of Freedom Industries also operated POCA Blending and Crete Technologies. In late 2013, the principals of Freedom Industries sold Freedom, along with Etowah, POCA Blending and Crete Technologies to Chemstream Holdings, Inc. with an effective date of December 31, 2013.

On the morning of January 9, 2014, employees discovered Tank 396 leaking with a substance known as 4-methyleyclohexane methane which is commonly referred to as “MCHM.” The leak at the Etowah facility caused a significant amount of the MCHM to breach the

¹ See Freedom Industries’ Consolidated Balance Sheet as of September 30, 2014 as contained in pages 42 and 43 of the Presentence Report.

containment area and run into the Elk River in two locations. Freedom employees worked diligently over the next few days to contain the leak and empty Tank 396.

On-going since that time has been remediation efforts to clean up the property to prevent further contamination of the surrounding area.

On January 17, 2014, Freedom Industries filed a voluntary petition for bankruptcy pursuant to Chapter 11 of the Bankruptcy Code. The Bankruptcy Court has overseen the remediation efforts and the wrap-up of the business affairs of Freedom Industries. On October 6, 2015, the Bankruptcy Court issued an order confirming the Plan of Liquidation relieving the chief restructuring officer of his duties and appointed Mr. Robert Johns as the Spill Claim Plan Administrator. Mr. Johns' duties are to identify and liquidate any assets remaining from Freedom Industries, ensure that the site has been remediated, and assist with the settlement of all claims that have been filed against Freedom Industries.

For the above stated reasons, Freedom Industries, Inc. respectfully requests that the court forego the imposition of any fines, restitution or period of probation against Freedom Industries, Inc.

Respectfully submitted,

Pietragallo Gordon Alfano Bosick & Raspanti, LLP

By: /s/ Robert R. Leight
Robert R. Leight, Esquire (WV State Bar No. 7110)
38th Floor One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219
Phone: (412) 263-2000
Fax: (412) 263-4222
Email: RRL@Pietragallo.com
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within pleading has been served upon the following counsel of record by electronic service through CM/ECF.

PHILIP H. WRIGHT, AUSA
WV State Bar No. 7106
300 Virginia Street East, Room 4000
Charleston, WV 25301
Telephone: 304-345-2200
Fax: 304-347-5104
Email: philip.wright@usdoj.gov

Pietragallo Gordon Alfano Bosick & Raspanti, LLP

By: /s/ Robert R. Leight
Robert R. Leight, Esquire (WV State Bar No. 7110)
38th Floor One Oxford Centre
301 Grant Street
Pittsburgh, PA 15219
Phone: (412) 263-2000
Fax: (412) 263-4222
Email: RRL@Pietragallo.com
Counsel for Defendant